

PROPOSED AMENDMENTS TO RULES 800 through 807, RULES OF PROCEDURE

(Proposed new language are indicated by the use of ***Bold, Italics and Underline***, while deletions are indicated by ~~Strikeout~~.)

K. ~~PILOT~~ PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND/OR MENTAL HEALTH ISSUES

RULE 800. PURPOSE OF ~~PILOT~~ PROGRAM; AUTHORITY

Consistent with the intent of the Legislature expressed in Business and Professions Code section 6230, et seq., these rules apply to proceedings before the State Bar Court in which a respondent is identified as having a substance abuse or mental health issue and is seeking to participate in or has been accepted to participate in the State Bar Court's ~~Pilot~~ Program for Respondents with Substance Abuse and/or Mental Health Issues ("~~Pilot~~ Program").

Eff. September 1, 2002.

Source: New

RULE 801. ELIGIBILITY TO APPLY FOR PARTICIPATION IN ~~PILOT~~ PROGRAM

- (a) At any time following the commencement of a proceeding in the State Bar Court, at the request of the respondent, the Office of the Chief Trial Counsel or on the court's own motion, a respondent may be referred to a judge who has been designated by the Presiding Judge as a ~~Pilot~~ Program Judge to determine the respondent's eligibility for participation in the ~~Pilot~~ Program.
- (b) Prior to the commencement of a proceeding in the State Bar Court, a judge assigned to conduct an Early Neutral Evaluation Conference pursuant to rule 75 may refer a respondent to a ~~Pilot~~ Program Judge to determine the respondent's eligibility for participation in the ~~Pilot~~ Program. Additionally, either the Office of the Chief Trial Counsel or the respondent may request the Court to make a referral to a ~~Pilot~~ Program Judge for such evaluation.

Eff. September 1, 2002. Revised: August 1, 2003.

Source: New

RULE 802. ACCEPTANCE FOR PARTICIPATION IN ~~PILOT~~ PROGRAM.

- (a) Acceptance of a respondent for participation in the ~~Pilot~~ Program shall be at the discretion of the ~~Pilot~~ Program Judge but shall be contingent upon the respondent's acceptance into the State Bar's Lawyer Assistance Program and upon such additional conditions as the ~~Pilot~~ Program Judge may impose, including but not limited to, a stipulation as to facts and conclusions of law in the pending disciplinary proceeding that is agreed upon and signed by the respondent and the Office of the Chief Trial Counsel and the respondent's written agreement to the court's terms and conditions for his or her participation in the ~~Pilot~~ Program.

- (b) *A respondent who has been convicted of a criminal offense that subjects him or her to summary disbarment pursuant to Business and Professions Code section 6102, subdivision (c) shall not be eligible to participate in the Program*
- (c) *In order to be eligible for acceptance into the Program, the respondent must establish that there is a nexus between his or her substance abuse or mental health issue and the acts that constitute disciplinable violations of the State Bar Act and/or the Rules of Professional Conduct. As used in herein, the term “nexus” means evidence that there is a reasonable likelihood that the substance abuse or mental health issue either precipitated the respondent’s misconduct or that it was a contributing cause of the misconduct.*
- (d) Unless otherwise agreed by the parties, in the event the respondent is not accepted into the ~~Pilot~~ Program or declines to sign the written agreement regarding the terms and conditions of his or her participation in the ~~Pilot~~ Program, any stipulation as to facts and conclusions of law signed by the parties in the pending disciplinary proceeding and entered into as a condition for participation in the ~~Pilot~~ Program shall be rejected and shall not be binding upon either the respondent or the Office of the Chief Trial Counsel.

Eff. September 1, 2002.

Source: New

RULE 803. ~~DISPOSITION~~ DEGREE OF DISCIPLINE; DEFERRAL OF IMPOSITION

- (a) If a respondent seeking to participate in the ~~Pilot~~ Program has entered into a stipulation as to facts and conclusions of law in the pending disciplinary proceeding and has agreed to or has fulfilled all of the other requirements identified by the ~~Pilot~~ Program Judge as conditions for the respondent’s participation in the Program, the ~~Pilot~~ Program Judge shall provide the respondent with a written statement regarding (1) the disposition that will be implemented or recommended to the Supreme Court in the event that the respondent successfully completes the ~~Pilot~~ Program; and (2) the disposition that will be implemented or recommended to the Supreme Court, based upon the stipulated facts and conclusions of law, if the respondent does not successfully complete the ~~Pilot~~ Program. Depending upon the extent and severity of the respondent’s stipulated misconduct, including the degree of harm suffered by his or her client(s), the disposition implemented or recommended following successful completion of the ~~Pilot~~ Program may range as low as the dismissal of the charges or proceeding and, as a result of termination from the ~~Pilot~~ Program, may range as high as disbarment.
- (b) If the respondent is accepted for participation in the ~~Pilot~~ Program, the stipulation as to facts and conclusions of law shall not be filed and the proposed disposition shall not be implemented or transmitted as a recommendation to the Supreme Court until the respondent either successfully completes the ~~Pilot~~ Program or is terminated from the Program.

Eff. September 1, 2002. Revised: August 1, 2003.

Source: New

RULE 804. TERM OF PARTICIPATION IN PILOT PROGRAM.

In order to successfully complete the Pilot Program, a respondent must participate in the Program for a term of 36 months from the date of acceptance in the Program, provided that, with earned incentives as specified in the written agreement signed by the respondent, the respondent may complete the Pilot Program in a minimum of 18 months. No respondent may successfully complete the Pilot Program without the certification of the Lawyer Assistance Program that he or she has been substance-free for a period of at least one year or, in the case of a respondent with mental health issues, without a recommendation from a mental health professional that is satisfactory to the Pilot Program Judge.

Eff. September 1, 2002.

Source: New

RULE 805. TERMINATION FROM PROGRAM

Prior to terminating a respondent from the Program, the Court shall issue an order to show cause notifying the parties of the Court's intent to terminate the respondent from the Program and the proposed reasons for the termination. Within ten (10) days of service of the Court's order to show cause, the parties in the written response, the Court shall hold a hearing on the order to show cause.

Eff. TBD

Source: New

RULE 806. CONFIDENTIALITY.

- (a) ~~A respondent's participation in the Pilot Program and the fact that the respondent has either successfully completed the Program or has been terminated from the Program shall be public.~~ **The fact that a respondent is currently in the Program and any pleadings or orders filed in the proceeding shall be public.**
- (b) All information concerning the nature and extent of the respondent's treatment is absolutely confidential and shall not be disclosed to the public absent an express written waiver by the respondent.
- (c) **Documents that are lodged with the Court, including but not limited to, stipulations as to facts and conclusions of law, the Court's written statement of proposed disposition, the respondent's nexus statement, the briefs of the parties on the recommended disposition and reports from the Lawyer Assistance Program regarding the respondent's compliance with Lawyer Assistance Program requirements shall not be public unless and until they are ordered filed by the Court upon the respondent's successful completion of the Program or the respondent's termination from the Program.**
- (d) **Notwithstanding the provisions of subdivision (c) above, the Court may provide the Office of Probation and/or the Client Security Fund with such documents as may be necessary to enable the Office of Probation to monitor the respondent's compliance with LAP and Program requirements and to enable the Client Security Fund to process any claim for**

reimbursement made against the Fund. Notwithstanding the provisions of subdivision (c) above, the Office of the Chief Trial Counsel may provide the complainant with (i) a written summary of the status of the disciplinary proceeding against the respondent, including the fact that the respondent is seeking to participate or has been accepted for participation in the Program; and (ii) a written summary of the acts of misconduct relating to the complainant that have been admitted by a respondent who has been accepted into the Program.

Eff. September 1, 2002.

Source: New

RULE 806Z. REVIEW

No decision or order of the ~~Pilot~~Program Judge may be reviewed by the State Bar Court Review Department except as follows:

- (a) The decision of the ~~Pilot~~Program Judge to admit the respondent to the ~~Pilot~~Program or to deny the respondent admittance to the ~~Pilot~~Program shall be reviewable only pursuant to Rule 300.
- (b) The decision of the ~~Pilot~~Program Judge to terminate a respondent from the ~~Pilot~~Program or to deny the State Bar's motion to terminate the respondent from the ~~Pilot~~Program shall be reviewable only pursuant to Rule 300.

Eff. September 1, 2002.

Source: New

~~Rule 807. SUNSET PROVISION~~

~~Rules 800 through 806 shall remain in effect only until October 1, 2004, and as of that date are repealed, unless otherwise those rules are re-adopted or amended prior to that date or the sunset date provided in this Rule is extended.~~

~~Eff.: December 7, 2002. Revised: January 1, 2004.~~

~~Source: New~~